

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2
3 In the Matter of

4 **MARK R. AUSTEIN, M.D.**

5 Holder of License No. 14196
6 For the Practice of Allopathic Medicine
7 In the State of Arizona.

Case No. MD-08-0418A

**CONSENT AGREEMENT FOR
LICENSE REACTIVATION AND
PROBATION**

8 **CONSENT AGREEMENT**

9 By mutual agreement and understanding, between the Arizona Medical Board
10 ("Board") and Mark R. Austein, M.D. ("Respondent"), the parties agreed to the following
11 disposition of this matter.

12 1. Respondent has read and understands this Consent Agreement and the
13 stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement").
14 Respondent acknowledges that he has the right to consult with legal counsel regarding
15 this matter.

16 2. By entering into this Consent Agreement, Respondent voluntarily
17 relinquishes any rights to a hearing or judicial review in state or federal court on the
18 matters alleged, or to challenge this Consent Agreement in its entirety as issued by the
19 Board, and waives any other cause of action related thereto or arising from said Consent
20 Agreement.

21 3. This Consent Agreement is not effective until approved by the Board and
22 signed by its Executive Director.

23 4. The Board may adopt this Consent Agreement or any part thereof. This
24 Consent Agreement, or any part thereof, may be considered in any future disciplinary
25 action against Respondent.

1 5. This Consent Agreement does not constitute a dismissal or resolution of other
2 matters currently pending before the Board, if any, and does not constitute any waiver,
3 express or implied, of the Board's statutory authority or jurisdiction regarding any other
4 pending or future investigation, action or proceeding. The acceptance of this Consent
5 Agreement does not preclude any other agency, subdivision or officer of this State from
6 instituting other civil or criminal proceedings with respect to the conduct that is the subject
7 of this Consent Agreement.

8 6. All admissions made by Respondent are solely for final disposition of this
9 matter and any subsequent related administrative proceedings or civil litigation involving
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended
11 or made for any other use, such as in the context of another state or federal government
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
13 any other state or federal court.

14 7. Upon signing this agreement, and returning this document (or a copy thereof)
15 to the Board's Executive Director, Respondent may not revoke the acceptance of the
16 Consent Agreement. Respondent may not make any modifications to the document. Any
17 modifications to this original document are ineffective and void unless mutually approved
18 by the parties.

19 8. If the Board does not adopt this Consent Agreement, Respondent will not
20 assert as a defense that the Board's consideration of this Consent Agreement constitutes
21 bias, prejudice, prejudgment or other similar defense.

22 9. This Consent Agreement, once approved and signed, is a public record that
23 will be publicly disseminated as a formal action of the Board and will be reported to the
24 National Practitioner Data Bank and to the Arizona Medical Board's website.
25

10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

11. Any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter") and 32-1451.

12. Respondent has read and understands the condition(s) of probation.



MARK R. AUSTEIN, M.D.

DATED: 6-24-08

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 14196 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-08-0418A after receiving a request from Respondent for reactivation of his license and participation in the Board's Monitored Aftercare Program (MAP).

4. On June 24, 1993, the Board was notified that Respondent was unable to practice medicine due to substance abuse. Respondent was admitted for chemical dependency treatment, but left on July 29, 1993 after he was advised of the recommendation for extended treatment. Subsequently, Respondent successfully completed treatment on January 7, 1995 and entered the Board's Monitored Aftercare Program (MAP) in 1995. Respondent successfully completed MAP in 2000.

5. On December 9, 2007, Respondent notified Staff that he had been hospitalized for detoxification from benzodiazepines and opiates. On December 11, 2007, Respondent's medical license was placed on Inactive with Cause status due to a chemical dependency relapse.

6. On May 10, 2008, Respondent successfully completed substance abuse treatment and requested reactivation of his medical license. On May 30, 2008, Respondent entered into an Interim Consent Agreement to participate in MAP.

7. Board staff recommends that Respondent's license be reactivated and he be placed in MAP under a final Board Order.

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1 release to Board Staff, upon request, all records relating to Respondent's treatment, and
2 to submit monthly reports to Board Staff regarding attendance and progress. The reports
3 shall be submitted on or before the 10th day of each month.

4 **3. 12 Step or Self-Help Group Meetings.** Respondent shall attend
5 ninety 12-step meetings or other self-help group meetings appropriate for substance
6 abuse and approved by Board Staff, for a period of ninety days beginning not later than
7 either (a) the first day following Respondent's discharge from chemical dependency
8 treatment or (b) the date of this Order.

9 **4.** Following completion of the ninety meetings in ninety days,
10 Respondent shall participate in a 12-step recovery program or other self-help program
11 appropriate for substance abuse as recommended by the MAP Director and approved by
12 Board Staff. Respondent shall attend a minimum of three 12-step or other self-help
13 program meetings per week for a total of twelve per month. Two of the twelve meetings
14 must be Caduceus meetings. Respondent must maintain a log of all self-help meetings.
15 Board Staff will provide the log to Respondent.

16 **5. Board-Staff Approved Primary Care Physician.** Respondent shall
17 promptly obtain a primary care physician and shall submit the name of the physician to
18 Board Staff in writing for approval. The Board-approved primary care physician ("PCP")
19 shall be in charge of providing and coordinating Respondent's medical care and treatment.
20 Except in an *Emergency*, Respondent shall obtain medical care and treatment only from
21 the PCP and from health care providers to whom the PCP refers Respondent.
22 Respondent shall request that the PCP document all referrals in the medical record.
23 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and
24 provide a copy of this Order the PCP. Respondent shall also inform all other health care
25 providers who provide medical care or treatment that Respondent is participating in MAP.

1 a. “*Emergency*” means a serious accident or sudden illness that, if not
2 treated immediately, may result in a long-term medical problem or loss of life.

3 **6. Medication.** Except in an *Emergency*, Respondent shall take no
4 *Medication* unless the PCP or other health care provider to whom the PCP refers
5 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any
6 *Medication*.

7 a. “*Medication*” means a prescription-only drug, controlled substance,
8 and over-the counter preparation, other than plain aspirin, plain ibuprofen,
9 and plain acetaminophen.

10 **7.** If a controlled substance is prescribed, dispensed, or is administered
11 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing
12 within 48 hours and notify the MAP Director immediately. The notification shall contain all
13 information required for the medication log entry specified in paragraph 8. Respondent
14 shall request that the notification be made a part of the medical record. This paragraph
15 does not authorize Respondent to take any *Medication* other than in accordance with
16 paragraph 6.

17 **8. Medication Log.** Respondent shall maintain a current legible log of
18 all *Medication* taken by or administered to Respondent, and shall make the log available to
19 the Board Staff upon request. For *Medication* (other than controlled substances) taken on
20 an on-going basis, Respondent may comply with this paragraph by logging the first and
21 last administration of the *Medication* and all changes in dosage or frequency. The log, at
22 a minimum, shall include the following:

- 23 a. Name and dosage of *Medication* taken or administered;
24 b. Date taken or administered;
25 c. Name of prescribing or administering physician;

1 d. Reason *Medication* was prescribed or administered.

2 This paragraph does not authorize Respondent to take any *Medication* other than in
3 accordance with paragraph 6.

4 9. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol
5 or any food or other substance containing poppy seeds or alcohol.

6 10. **Biological Fluid Collection.** During all times that Respondent is
7 physically present in the State of Arizona and such other times as Board Staff may direct,
8 Respondent shall promptly comply with requests from Board Staff or MAP Director to
9 submit to witnessed biological fluid collection. If Respondent is directed to contact an
10 automated telephone message system to determine when to provide a specimen,
11 Respondent shall do so within the hours specified by Board Staff. For the purposes of this
12 paragraph, in the case of an in-person request, "promptly comply" means "immediately."
13 In the case of a telephonic request, "promptly comply" means that, except for good cause
14 shown, Respondent shall appear and submit to specimen collection not later than two
15 hours after telephonic notice to appear is given. The Board in its sole discretion shall
16 determine good cause.

17 11. Respondent shall provide Board Staff in writing with one telephone
18 number that shall be used to contact Respondent on a 24 hour per day/seven day per
19 week basis to submit to biological fluid collection. For the purposes of this section,
20 telephonic notice shall be deemed given at the time a message to appear is left at the
21 contact telephone number provided by Respondent. Respondent authorizes any person
22 or organization conducting tests on the collected samples to provide testing results to the
23 Board and the MAP Director.

24 12. Respondent shall cooperate with collection site personnel regarding
25 biological fluid collection. Repeated complaints from collection site personnel regarding

1 Respondent's lack of cooperation regarding collection may be grounds for termination
2 from MAP.

3 **13. Out of State Travel and/or Unavailability at Home or Office**
4 **Telephone Number.** Respondent shall provide Board Staff at least three business
5 days advance written notice of any plans to be away from office or home when such
6 absence would prohibit Respondent from responding to an order to provide a biological
7 fluid specimen or from responding to communications from the Board. The notice shall
8 state the reason for the intended absence from home or office, and shall provide a
9 telephone number that may be used to contact Respondent.

10 **14. Payment for Services.** Respondent shall pay for all costs,
11 including personnel and contractor costs, associated with participating in MAP at
12 time service is rendered, or within 30 days of each invoice sent to Respondent.

13 **15. Examination.** Respondent shall submit to mental, physical, and
14 medical competency examinations at such times and under such conditions as directed by
15 the Board to assist the Board in monitoring Respondent's ability to safely perform as a
16 physician and Respondent's compliance with the terms of this Order.

17 **16. Treatment.** Respondent shall submit to all medical, substance
18 abuse, and mental health care and treatment ordered by the Board.

19 **17. Obey All Laws.** Respondent shall obey all federal, state and local
20 laws, and all rules governing the practice of medicine in the State of Arizona.

21 **18. Interviews.** Respondent shall appear in person before the Board and
22 its Staff and MAP committees for interviews upon request, upon reasonable notice.

23 **19. Address and Phone Changes, Notice.** Respondent shall
24 immediately notify the Board in writing of any change in office or home addresses and
25 telephone numbers.

1 **20. Relapse, Violation.** In the event of chemical dependency relapse by
2 Respondent or Respondent's use of drugs or alcohol in violation of the Order,
3 Respondent's license shall be **REVOKED**. Respondent agrees to waive formal hearing
4 on the revocation. In the alternative, Respondent may **SURRENDER HIS LICENSE** if he
5 agrees in writing to being impaired by alcohol or drug abuse. A.R.S. § 32-1452(G).

6 **21. Notice Requirements.**

7 **(A)** Respondent shall immediately provide a copy of this Order to all
8 employers and all hospitals and free standing surgery centers where Respondent currently
9 has privileges. Within 30 days of the date of this Order, Respondent shall provide the
10 Board with a signed statement of compliance with this notification requirement. Upon any
11 change in employer or upon the granting of privileges at additional hospitals and free
12 standing surgery centers, Respondent shall provide the employer, hospital or free standing
13 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
14 the granting of privileges at additional hospitals and free standing surgery centers,
15 Respondent shall provide the Board with a signed statement of compliance with this
16 notification requirement.

17 **(B)** Respondent is further required to notify, in writing, all employers,
18 hospitals and free standing surgery centers where Respondent currently has or in the
19 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
20 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
21 of any of these events Respondent shall provide the Board written confirmation of
22 compliance with this notification requirement.

23 **22. Public Record.** This Order is a public record.

24 **23. Out-of-State.** In the event Respondent resides or practices as a
25 physician in a state other than Arizona, Respondent shall participate in the rehabilitation

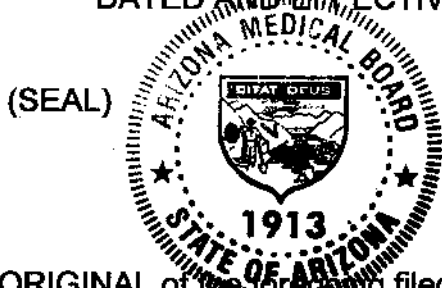
1 program sponsored by that state's medical licensing authority or medical society.
2 Respondent shall cause the monitoring state's program to provide written reports to the
3 Board regarding Respondent's attendance, participation, and monitoring. The reports
4 shall be due quarterly on or before the 15th day of March, June, September, and
5 December of each year, until the Board terminates this requirement in writing. The
6 monitoring state's program and Respondent shall immediately notify the Board if
7 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)
8 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug
9 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e)
10 is required to undergo any additional treatment.

11 **24.** This Order supersedes all previous consent agreements and
12 stipulations between the Board and/or the Executive Director and Respondent.

13 **25.** The Board retains jurisdiction and may initiate new action based upon
14 any violation of this Order.

15 **3.** This Order is the final disposition of case number MD-08-0418A.

16 DATED AND EFFECTIVE this 8th day of August, 2008.



ARIZONA MEDICAL BOARD

By

L. S. Wynn
Lisa S. Wynn
Executive Director

21 ORIGINAL of the foregoing filed
this 8th day of August, 2008 with:

22 Arizona Medical Board
23 9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

24 EXECUTED COPY of the foregoing mailed
25 this 8th day of August, 2008 to:

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Mark R. Austein, M.D.
Address of Record


Investigational Review